

Local Exposition Taxes

**For Persons Selling Lodging, Food,
or Beverages or Renting Automobiles
in Milwaukee County**

Includes information on:

- **Registering**
- **Filing returns and paying the tax**
- **What's taxable and what's exempt**
- **Recordkeeping**

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IMPORTANT CHANGES

- **Online business tax registration.** Application for business tax registration may now be made online. Page 3.
- **Refund of tax from seller to buyer.** New requirements of sellers to refund tax to buyers or remit to the Department of Revenue, first applies to amounts due dated, offsets taken, and the discovery of amounts collected erroneously as taxes on October 28, 2005, even if the notices, offsets, and amounts relate to sales that occurred as far back as September 1, 1994. Page 16.
- **Clarify exempt for meals, food, food products, or beverages sold by day care centers.** The law was clarified to state that the exemption applies to day care centers that are licensed under Chapter 48, effective July 27, 2005. The law previously state that the exemption applied to day care centers that are registered under Chapter 48. Page 10.

I. INTRODUCTION

The City of Milwaukee created a Local Exposition District called the “Wisconsin Center Tax District” for the purpose of acquiring and managing exposition center facilities. To fund these facilities, the District imposes the following taxes:

- 2% basic room tax
- 7% additional room tax (City of Milwaukee only)
- 0.25% food and beverage tax
- 3% rental car tax

These taxes apply to persons selling lodging, food, or beverages or renting automobiles in municipalities located wholly or partially within Milwaukee County.

This publication explains who is subject to the local exposition taxes, how to register, file returns and pay

the taxes, and what types of tangible personal property and services are subject to these taxes.

The Wisconsin Department of Revenue is responsible for administering the taxes. If you have any questions, you may write to the Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949, for assistance. You may also visit or call either of the following Wisconsin Department of Revenue offices for assistance:

Milwaukee	819 N. 6th St.	(414) 227-4444
		TTY (414) 227-4147
Madison	2135 Rimrock Rd.	(608) 266-2776
		TTY (608) 267-1049

These offices are open from 7:45 a.m. to 4:30 p.m., Monday through Friday.

CAUTION

The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and resolutions adopted by the Wisconsin Center Tax District as of March 1, 2006. Laws or resolutions enacted after this date, administrative rules, and court decisions may change the interpretations in this publication.

Important: In this publication, “Milwaukee County” includes a city or village wholly or partially in Milwaukee County.

Example: The Village of Bayside is located in both Milwaukee County and Ozaukee County. The City of Milwaukee is located in Milwaukee, Washington, and Waukesha Counties. Since the Village of Bayside and the City of Milwaukee are located partially within Milwaukee County, they are in “Milwaukee County” for purposes of the local exposition taxes. All sales that take place in the Village of Bayside or the City of Milwaukee are considered to be in “Milwaukee County,” regardless of whether the sale took place in the Milwaukee County portion or the other county portion of the Village of Bayside and City of Milwaukee.

II. WHO IS SUBJECT TO LOCAL EXPOSITION TAXES?

A. Who Is Subject to the Taxes?

Every person selling certain lodging, food, or beverages or renting automobiles is subject to the local exposition taxes if:

1. The seller is “engaged in business” in Milwaukee County, **and**
2. The sale takes place in Milwaukee County.

Exception: Persons selling food and beverages subject to the food and beverage tax are exempt from the tax if their liability for the tax on such food and beverages is less than \$5 for the taxable year.

Who is “engaged in business” in Milwaukee County?

A seller is “engaged in business” in Milwaukee County, for purposes of the local exposition taxes, if one or more of the following conditions exist in Milwaukee County (this list is not all-inclusive):

- The seller has a store in Milwaukee County.
- The seller owns business real property in Milwaukee County.
- The seller leases or rents tangible personal property located in Milwaukee County.
- The seller delivers goods in Milwaukee County in company-operated vehicles.
- The seller maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, agent, or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in Milwaukee County.
- The seller has a representative, agent, sales person, canvasser, or solicitor operating in Milwaukee County under the authority of the seller or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property or taxable services.
- The seller services, repairs, or installs products in Milwaukee County.

- The seller performs construction activities in Milwaukee County.

Where does a sale take place?

- Lodging

A sale of lodging takes place at the location where the lodging is furnished to a customer.

If the lodging is furnished in Milwaukee County, it is subject to the 2% basic room tax. If the lodging is furnished in the City of Milwaukee, it is subject to the 2% basic room tax **and** the 7% additional room tax.

- Food and beverages

A sale of food and beverages takes place where possession of the food and beverages transfers from the seller or the seller’s agent to the buyer or the buyer’s agent. A common carrier and the U.S. Postal Service are deemed agents of the seller, regardless of the f.o.b. point and how the freight or postage is paid.

If the sale takes place in Milwaukee County, it is subject to the 0.25% food and beverage tax, assuming that the seller is engaged in business in Milwaukee County.

Example: A restaurant in Waukesha County receives an order for meals. The meals are delivered by the restaurant in its truck to Milwaukee County. The sale of the meals is subject to the 0.25% food and beverage tax because (1) the sale took place in Milwaukee County (where the restaurant delivered the meals to the buyer), and (2) the seller is “engaged in business” in Milwaukee County as a result of delivering the meals into Milwaukee County in its own truck.

- Rental cars

1. Rentals of Less Than One Month

The rental takes place at the location where the automobile comes into the lessee’s possession.

If a lessee takes possession of the automobile in Milwaukee County, the rental is subject to the 3% rental car tax.

2. Rentals of One Month or More (but not more than 30 days)

The rental takes place at the location where the automobile will be customarily kept by the lessee.

If a lessee will customarily keep the automobile in Milwaukee County, the rental is subject to the 3% rental car tax.

Example 1: Individual A leases an automobile for the month of February (28 days). Individual A, when not driving the automobile, will keep it at her hotel in Milwaukee County. The rental is considered to take place in Milwaukee County (where the automobile will be customarily kept) and is subject to the 3% rental car tax.

Example 2: Assume the same facts as Example 1, except that Individual A leases the automobile for the month of January (31 days). The rental is not subject to the 3% rental car tax because the rental period is more than 30 days.

Note: For more information on what sales or rentals are subject to the local exposition taxes, refer to the following:

- Room taxes, Part VI, page 6
- Food and beverage tax, Part VII, page 7
- Rental car tax, Part VIII, page 12

B. Who Must Register?

Every person subject to any of the local exposition taxes is required to register with the Wisconsin Department of Revenue.

Note: Even though you are registered for Wisconsin sales and use tax purposes, you are still required to register for the local exposition taxes. You will not be issued a separate exposition tax permit. You will be registered under your sales or use tax number.

C. How to Register

Application to collect local exposition taxes may be made using one of the following methods:

- Complete Form BTR-101, *Application for Business Tax Registration*, and mail it to the Department of Revenue. A separate Schedule 1, *Additional Business Locations for Sales or Excise Tax Permits*, must be completed for each additional business location.

Form BTR-101 and additional Schedule 1s may be obtained from any Department of Revenue office or online at www.dor.state.wi.us/forms/sales/index.html. Keep a copy of the completed application for your records.

- If you are applying for a Seller's Permit and registering for local exposition taxes, you can use the Department of Revenue's online registration system and submit the application electronically. Go to <https://ww2.dor.state.wi.us/GenericFile/application?interview=1086489>. If you are registering for local exposition tax only, you may not use the online registration. You must apply using Form BTR-101.

III. COMPUTING THE TAX

A. Tax Imposed on Gross Receipts

The local exposition taxes are imposed on a seller's taxable "gross receipts." "Gross receipts" is the total amount of the sale or rental price, whether received in money or something other than money.

Example: A restaurant sells a pizza for \$10 and charges \$1 for delivering the pizza to a location in Milwaukee County. “Gross receipts” of \$11 are subject to the 0.25% food and beverage tax. The charge to the customer is computed as follows:

Selling price of pizza	\$ 10.00
Delivery charge	<u>1.00</u>
*Gross receipts subject to tax	\$ 11.00
State, county, and baseball stadium tax (\$11 X 5.6%)	.62
Food and beverage tax (\$11 X 0.25%)	.03
Total charge to customer	<u>\$ 11.65</u>

*Gross receipts do not include federal, state, and local taxes measured by a stated percentage of sales price or gross receipts (for example, Wisconsin state, county, and baseball stadium sales tax).

Gross receipts are computed in the same manner as for Wisconsin sales and use tax purposes, except that for the local exposition taxes:

1. Gross receipts are not reduced by charges for transportation that takes place after the sale.
2. Gross receipts are not reduced for trade-ins of tangible personal property.
3. There is no exemption for interest, finance, and insurance charges, even though the charges are separately stated on the invoice to the customer.

B. Collecting Tax From Customers

The local exposition taxes imposed on a seller may be passed on to the customer.

A retailer determines the amount of local exposition tax that may be collected from a customer on a transaction by multiplying the 0.25% food and beverage tax rate, the 3% rental car tax rate, or the 2% room tax (plus the 7% additional room tax, when applicable) times the aggregate sales price of all taxable items sold in a single transaction. The tax rate may not be multiplied by the sales price of each item separately and then totaled. The tax collectible from the customer is rounded to the nearest cent.

Example 1: A grocery store in Milwaukee sells a candy bar for 50¢. The food and beverage tax charged to the customer is zero ($50¢ \times 0.25\% = .125¢$ rounded to the nearest cent, which is zero).

Example 2: A restaurant in Milwaukee County sells a meal for \$10. The food and beverage tax charged to the customer is 3¢ ($\$10 \times 0.25\% = 2.5¢$ rounded to the nearest cent, which is 3¢).

Note: Although the bracket system is available for Wisconsin sales and use taxes, the bracket system is not authorized for collecting the local exposition taxes.

The seller is subject to the local exposition taxes, even if the tax is not collected from the customer.

Except for the 0.25% food and beverage tax, it is illegal for a seller to state or advertise that the local exposition taxes or any part of the tax will be assumed or absorbed by the seller.

C. Annual Tax Liability Less Than \$5

If your liability for the local food and beverage tax is less than \$5 for the taxable year, you are exempt from that tax for that year.

IV. ACCOUNTING METHODS

The accrual method of accounting must be used by all sellers to determine and report their gross receipts, with one exception. The Wisconsin Department of Revenue may, if it is satisfied that an undue hardship would result from using the accrual method, permit some other method, such as the cash method of accounting. Before using some other method, written approval must be obtained from the department. Written approval is not required to use the accrual method.

Under the accrual method of accounting, all cash, credit, installment, and conditional sales are included in gross receipts on the return for the reporting period in which the sale “occurs,” even though all or part of the payments for such sales are not received until a later reporting period.

Example: You file a return for the quarter ending March 31. You report under the accrual method. A \$100 sale occurred in March for which you receive payment in April. The \$100 sale must be reported on the return for the quarter ending March 31, even though payment is not received until April.

Note: The requirement to use the accrual method, as explained above, also applies to the 5% Wisconsin, the 0.5% county, and 0.1% and 0.5% stadium sales and use taxes.

V. FILING RETURNS AND PAYING THE TAX

Your local exposition taxes are reported on Form EX-12, *Local Exposition Tax Return*. A return will be mailed to you shortly before the end of each reporting period.

It is important to use the return provided to you by the Department of Revenue. Because the department reads these returns with a scanning device, photocopied returns may not be accurately read.

Returns will be mailed to all monthly, seasonal monthly, and quarterly filers in July. Annual filers will receive their returns in December. If you do not receive your returns by August 10th if you are monthly or quarterly filer or January 10th if you are an annual filer, please contact the department by:

1. Calling the Department of Revenue at (608) 266-2776, or
2. E-mailing us at sales10@dor.state.wi.us. Please include your tax account number, reporting period, and the name and phone number of a person we can contact.

Note: Do not use Form ST-12, *Wisconsin Sales and Use Tax Return*, to report local exposition taxes.

A. How Often Must a Return Be Filed?

You must file a return for each “reporting period,” even if no tax is due for that period. Your reporting period will begin as quarterly. Depending on the amount of your local exposition tax liability, at some future date, the Wisconsin Department of Revenue may notify you in writing that your returns must be filed monthly or annually.

Returns will be mailed to you before the end of your reporting period. Instructions are included with the return explaining how to complete the return. If you do not receive your return, contact the

Wisconsin Department of Revenue, as explained above.

B. Due Date for Filing

Each return will have printed on it the due date by which the return must be filed. Returns for a quarterly period must be filed by the last day of the month following the end of the quarter.

Note: If you are later notified that your reporting period is monthly and your local exposition tax liability is more than \$3,600 per quarter, returns may be due by the 20th day of the month following the end of the reporting period. Sellers required to file by the 20th of the month will receive a written notice from the Wisconsin Department of Revenue indicating their due date for filing returns.

C. Business at More Than One Location

If you are engaged in business at more than one location within Milwaukee County, even though you hold a separate seller’s permit for each location, you must file one consolidated local exposition tax return which includes figures for all of your sales subject to the local exposition taxes.

Note: Do not report on Form EX-12 the figures for sales that take place outside Milwaukee County.

Example 1: You operate 10 restaurants at 10 different locations in Milwaukee County. Form EX-12 should include the taxable receipts from sales subject to the local exposition taxes for all 10 restaurants.

Example 2: You operate 10 restaurants at 10 different locations. Two locations have sales in Milwaukee County. The remaining 8 locations are elsewhere in Wisconsin and do not have sales subject to the local exposition taxes. Form EX-12 should only include the total taxable receipts for the 2 restaurants that have sales subject to the local exposition taxes.

D. Seasonal Sellers

If you are open for business only part of the year, you may be allowed to file returns on a seasonal basis. You may submit a written request to Local

Exposition Taxes, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949 to file on a seasonal basis. This written request should include your Wisconsin seller's permit number, the beginning month of operation, and the closing month of operation.

E. Obtaining an Extension of Time to File

If you cannot file your return by the due date, write to the Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949, before the due date and request an additional month extension of time to file.

The department may grant you an additional month from the due date of the return to file. The department will notify you if the extension is granted. If the tax is not paid by the unextended due date, the tax will be subject to 1% interest per month during the extension period and 1.5% thereafter.

F. Payment of Tax

Pay the tax by check or money order made payable to the Wisconsin Department of Revenue. Do not use cash or postage stamps.

VI. ROOM TAXES

A. Basic Room Tax

A 2% room tax is imposed on gross receipts from the furnishing of lodging if the lodging is furnished:

1. in Milwaukee County, **and**
2. to a person for a continuous period of less than one month.

This includes (this list is not all-inclusive):

- Lodging furnished in hotels, motels, inns, tourist homes, tourist houses, tourist courts, lodging houses, rooming houses, apartment hotels, resort lodges, cabins, and other accommodations available to the public.
- Lodging provided by private camps. (**Note:** Private camps do not include those operated by corporations or associations organized and op-

erated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual.)

Example: A hotel located in Milwaukee County provides lodging for two days at the rate of \$40 per day to a customer. The customer is also charged \$10 for video rentals and \$5 for telephone calls. The total charge to the customer is \$95 (\$80 + \$10 + \$5). Only the \$80 charge for lodging is subject to the 2% room tax.

B. Additional Room Tax

An additional 7% room tax is imposed on gross receipts subject to the 2% basic room tax, as described in A. above, if the lodging is **furnished in the City of Milwaukee**.

Important: This 7% additional room tax does not apply to lodging furnished outside the City of Milwaukee. However, other room taxes administered by municipalities within Milwaukee County still apply.

Example 1: A hotel, located in the City of Milwaukee, provides lodging for ten days at the rate of \$40 per day to a customer. The charge by the hotel for the lodging is subject to the 2% basic room tax and the 7% additional room tax (9% total). The charge to the customer is computed as follows:

Lodging	\$ 400
State, county, and baseball stadium tax (\$400 X 5.6%)	22
Basic room tax (\$400 X 2%)	8
Additional room tax (\$400 X 7%)	<u>28</u>
Total charge to customer	<u>\$ 458</u>

Example 2: Assume the same facts as Example 1, except that the hotel is located in Oak Creek, which is in Milwaukee County. The lodging is subject to the 2% basic room tax. However, since Oak Creek is not in the City of Milwaukee, the lodging is not subject to the 7% additional room tax. **Caution:** If Oak Creek imposes its own room tax, that tax still applies.

C. Exemptions From Room Taxes

The same exemptions that apply for the 5% Wisconsin sales and use tax apply to the 2% and 7% room taxes.

Examples of exemptions that apply to lodging for the 2% and 7% room taxes are:

1. Sales to the federal government.
2. Sales to Wisconsin governmental units, including Wisconsin counties, cities, villages, towns, public schools, and school districts.
3. Sales to nonprofit organizations that hold a Certificate of Exempt Status (CES) from the Wisconsin Department of Revenue.
4. Sales by public schools, colleges, universities, hospitals, sanitoriums, or nursing homes.
5. Sales by agency camps (that is, camps operated by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual).
6. Sales for resale.

VII. FOOD AND BEVERAGE TAX

A. What's Taxable?

The 0.25% tax is imposed on gross receipts from sales in Milwaukee County of food and beverages that are subject to the 5% Wisconsin sales or use tax.

The following sales are subject to the 0.25% food and beverage tax:

1. Sales of meals, food, food products, and beverages sold **for direct consumption on the seller's premises**.

Sales of food and beverages for direct consumption on the premises that are subject to tax include sales by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating

houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, drive-ins, mobile sales units, clubs, YMCA's, YWCA's, and other businesses, organizations, or establishments.

"Premises," by way of illustration but not limitation, includes the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, rink, or stadium, or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served.

See Part VII.B.1., on page 9, for the tax treatment of vending machine sales.

Example 1: A restaurant located in Milwaukee County sells meals on their premises to the public. The charge for the meals is subject to the 0.25% food and beverage tax.

Example 2: A caterer is hired to prepare and serve meals, food, and drinks in Milwaukee County. The charge by the caterer is subject to the 0.25% food and beverage tax, regardless of whether prices are per meal, a lump sum, or a price per plate.

Example 3: A restaurant in Milwaukee County serves soda with the meals served at the restaurant. The sale of the soda and the meal is subject to the 0.25% food and beverage tax.

Example 4: A restaurant in Milwaukee County serves beer and liquor with the meals served at the restaurant. The sale of the beer and liquor and the meal is subject to the 0.25% food and beverage tax.

Note: Cover, minimum, entertainment, service, or other charges and tips added to the price of a meal, which are included in gross receipts subject to the 5% Wisconsin sales or use tax, are also included in the amount subject to the 0.25% food and beverage tax.

2. Sales of the following items for **off-premises** consumption (including sales from vending machines):

- a. Meals and sandwiches, whether heated or not

“Meals,” as used in this publication, include, but are not limited to, a diversified selection of food, food products, or beverages that are customarily consumed as a breakfast, lunch, or dinner, that may not easily be consumed without an article of tableware and that may not conveniently be consumed while standing or walking.

“Meals” do not include any of the following:

- Frozen items that are sold to a consumer.
- Items that are customarily heated or cooked after the retail sale and before they are consumed.
- A diversified selection of food, food products and beverages that is packaged together by a person other than the grocer before the sale to the consumer.

“Sandwiches,” as used in this publication, are a food that consists of a filling, such as meat, cheese, or a savory mixture, that is placed on a slice, or between two slices, of bread or something that takes the place of bread, such as a roll, croissant, or bagel.

“Sandwiches” include, but are not limited to:

- Burritos, tacos, enchiladas, or chimichangas.
- Pita sandwiches, gyros, and pocket sandwiches.

“Sandwiches” do not include:

- Hors d’oeuvres or canapés.
- Egg rolls.
- Cookies, cakes, pies, and similar desserts and pastries.
- Food that is sold frozen.

- b. Heated food and heated beverages

Heated food or heated beverages means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

Example 1: A supermarket in Milwaukee County sells chicken roasted on a rotisserie. The sales of the roasted chicken sold heated are subject to the 0.25% food and beverage tax.

Example 2: A donut shop in Milwaukee County sells a dozen donuts and 4 cups of coffee “to go.” The charge for the donuts is not subject to the food and beverage tax because the donuts are not heated and are for consumption off the donut shop’s premises. However, the charge for coffee is subject to the 0.25% food and beverage tax because it is heated, even though it may be consumed off the donut shop’s premises.

- c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas

Example 1: A grocery store in Milwaukee County sells ice cream cones, ice cream bars, and sundaes in its frozen food section. The sale of these items is subject to the 0.25% food and beverage tax.

Example 2: A convenience store in Milwaukee County has a self-serve soda dispenser. A customer selects a cup and fills it with soda from the dispenser. The sale of the soda is subject to the 0.25% food and beverage tax.

- d. Candy, chewing gum, lozenges, popcorn, and confections

Example 1: A supermarket in Milwaukee County sells chewing gum and candy. The sale of the gum and candy is subject to the 0.25% food and beverage tax.

Example 2: A candy store in Milwaukee County sells chocolates which a customer will give as a gift. The sale of the chocolates is subject to the 0.25% food and beverage tax.

- e. Salad bar or food bar sales that do not qualify for exemption as described in Part VII.B.2., on page 10.
3. Examples of taxable sales for off-premises consumption:

The following items are subject to the 0.25% local exposition food and beverage tax when sold for **off-premises** consumption (assuming the sale takes place in a city or village located wholly or partially in Milwaukee County):

- Breath mints
- Candied fruit
- Candy
- Candy apples
- Carbonated beverages, only when sold from a dispenser*
- Chewing gum
- Cold remedies in lozenge form
- Confections
- Cough drops
- Deli items that are heated or are a meal or sandwich
- Drug sundries in lozenge form
- Fruit drinks that are carbonated and sold from a dispenser
- Granola bars that are candy or yogurt coated
- Gum
- Heated foods and beverages
- Ice cream bars and similar products
- Ice cream in cones
- Internal remedies in lozenge form (for example, throat lozenges)
- Lozenges
- Medicinal preparations in lozenge form
- Mineral tablets in lozenge form
- Nuts that are candy or yogurt coated or honey roasted
- Peanuts that are candy or yogurt coated or honey roasted
- Popcorn, raw or popped

- Raisins that are candy or yogurt coated
- Root beer that is carbonated and sold from a dispenser*
- Sandwiches, hot or cold, but not frozen
- Soda water beverages that are sold from a dispenser*
- Soft drinks that are carbonated and sold from a dispenser*
- Taffy apples
- Water that is carbonated and sold from a dispenser*
- Yogurt bars, cones, and sundaes

* **Note:** Sales of carbonated beverages, soda water beverages, carbonated soft drinks (including root beer), and carbonated water in cans or bottles, for off-premises consumption, are **not** subject to the 0.25% food and beverage tax.

Caution: This list of items is not all-inclusive. Therefore, there may be items which are not included in this list which are subject to Wisconsin sales tax and the 0.25% food and beverage tax.

For sales of items that are sold packaged and include both taxable and nontaxable items, see Part VII.C., page 11.

B. What's Exempt?

Sales of meals, food, food products, and beverages that are exempt from the 5% Wisconsin sales or use tax are also exempt from the 0.25% food and beverage tax.

Examples of sales that are exempt from the 0.25% food and beverage tax include (this list is not all-inclusive):

1. Sales of food and beverages for off-premises consumption, except those described in Part VII.A.2., pages 7 through 9.

Food and beverages sold from vending machines are considered to be sold for consumption off the seller's premises. Therefore, sales from a vending machine of food and beverages are exempt from the 0.25% food and

beverage tax, except as noted in Part VII.A.2. and 3., on pages 7 through 9.

Example 1: A grocery store in Milwaukee County sells individual cans and bottles of soda, as well as six-packs, 12-packs, and cases, for off-premises consumption. Customers select the soda they wish to purchase from shelves or refrigerated display cases. The sale of the soda is not subject to the 0.25% food and beverage tax.

Example 2: A liquor store in Milwaukee County sells individual cans and bottles of beer, as well as six-packs, 12-packs, and cases for off-premises consumption. The sale of the beer is not subject to the 0.25% food and beverage tax.

Example 3: A vending machine located in Milwaukee County offers apples, cookies, and potato chips for sale. The sales of the apples, cookies, and potato chips are not subject to the 0.25% food and beverage tax, since the sale of food and beverages from vending machines is considered to be for consumption off the seller's premises.

Example 4: A vending machine located in Milwaukee County offers cans of soda for sale. The sale of canned soda is not subject to the 0.25% food and beverage tax.

2. Salad bar or food bar sales if (1) the customer makes selections and puts them into a container supplied by the retailer, (2) 50% or more of the sales price is attributable to goods that are exempt from Wisconsin sales or use tax, and (3) the customer consumes the salad and food items off the retailer's premises. See Part VII.C., on page 11 for additional information about sales of food combinations packaged by the retailer as well as packaged by someone other than the retailer.
3. Meals, food, food products, or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education if:
 - a. The items are furnished by such institution to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or
 - b. The items are furnished by such institution to a National Football League team.
4. Meals, food, food products, and beverages sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities, or day care centers licensed under ch. 48, Wis. Stats., and served at the hospital, sanatorium, nursing home, retirement home, community-based residential facility, or day care center.
5. Meals, food, food products, or beverages sold to the elderly or handicapped by sellers providing "mobile meals on wheels."
6. Sales to federal and Wisconsin governmental units (including Wisconsin counties, cities, villages, towns, public schools, and school districts), and nonprofit organizations holding a Certificate of Exempt Status (CES) from the Wisconsin Department of Revenue.
7. Sales by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts.
8. Occasional sales by nonprofit organizations. For more information, see Wisconsin Publication 206, *Sales Tax Exemption for Nonprofit Organizations*. This publication is available from any Department of Revenue office or from the department's web site at www.dor.state.wi.us/html/taxpubs.html#sales.
9. Sales for resale.
10. Sales of food and beverages subject to the food and beverage tax if the liability for the tax on such food and beverages is less than \$5 for the taxable year.

11. Sales of the following items by a restaurant to its employees during the employees' work hours:

- Soda water beverages, bases, concentrates, and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks, ades, cocktails, punches, and nectars which have additives known as extenders.
- Meals and sandwiches, whether heated or not.
- Heated food and heated beverages.
- Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas.
- Candy, chewing gum, lozenges, popcorn, and confections.

Note: Sales to employees of the items listed above, except carbonated beverages sold in cans or bottles, are taxable if the sales are not made during the employee's work hours.

Example 1: Restaurant A sells a meal to Restaurant Employee B during Restaurant Employee B's work hours. Restaurant A's sale of the meal to Restaurant Employee B is not subject to the 0.25% food and beverage tax.

Example 2: Restaurant D sells Restaurant Employee E a meal after Restaurant Employee E's work hours. Restaurant D's sale of the meal to Restaurant Employee E is subject to the 0.25% food and beverage tax. A meal sold before or after the employee's work hours is not exempt.

Example 3: Restaurant F sells Restaurant Employee G an individual bag of potato chips during Restaurant Employee G's work hours for consumption on Restaurant F's premises. The chips are not sold as part of a meal. Restaurant F's sale of the chips to Restaurant Employee G is subject to the 0.25% food and beverage tax, because (a) the sale of the chips is for on-premises consumption, and (b) a bag of chips, when not sold as part of a meal, is not included in the above list of items exempt from tax when sold by a restaurant to its employee.

C. Combination of Taxable and Exempt Food and Beverages

1. Combinations packaged by the retailer.

If a combination packaged by the retailer is sold that contains both taxable (for example candy) and nontaxable (for example fruit) food and beverages, the sale of taxable items (for example candy) is subject to the 0.25% food and beverage tax, even though sold with nontaxable food and beverages. The retailer should allocate the selling price between the taxable and nontaxable items and impose the 0.25% tax on the taxable food and beverages.

Example: A grocery store located in Milwaukee County packages and sells gift packages which contain fruit, cheese, sausage, and candy. The packages sell for \$20. The store's cost of the nontaxable items (fruit, cheese, and sausage) is \$10 and the cost of the candy is \$2.

The 0.25% food and beverage tax may be computed as follows:

Cost of candy	\$	2
Divide by cost of all items in the package	÷	<u>12</u>
		.167
Multiply by selling price	X	<u>20</u>
Amount subject to tax	\$	3.34
Multiply by 0.25% tax	X	<u>0.0025</u>
Food and beverage tax due	\$	<u>.01</u> *

*.83¢ rounded to the nearest cent, which is 1¢

2. Combinations packaged by someone other than the retailer.

If a combination of food, food products, and beverages is packaged together with other goods by a person other than the retailer before the retailer makes the sale to the final consumer and 50% or more of the sales price of the package is attributable to goods that are exempt from the 0.25% food and beverage tax, the total selling price of the combined package is exempt from the 0.25% food and beverage tax.

If less than 50% of the sales price is attributable to goods that are exempt from the 0.25% food and beverage tax, that portion of the selling price attributable to the taxable items is subject to the 0.25% food and beverage tax.

Example 1: A grocery store sells to a consumer a package that contains crackers, meat, cheese, candy, and a fruit drink that is not a fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$3 selling price, \$2 is attributable to the meat, cheese, and crackers (exempt items) and \$1 is attributable to the candy and fruit drink (taxable items). Since 50% or more of the selling price of the package is attributable to food that is exempt from the 0.25% food and beverage tax, the entire \$3 selling price is exempt from the 0.25% food and beverage tax.

Example 2: A grocery store sells to a consumer a package that contains a sandwich, pretzels, cookies, and a fruit drink that is not a fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$3 selling price, \$2 is attributable to the sandwich and fruit drink (taxable items) and \$1 is attributable to the pretzels and cookies (exempt items). Since less than 50% of the selling price of the package is attributable to food that is exempt from the 0.25% food and beverage tax, \$2 of the \$3 selling price attributable to taxable items is subject to the 0.25% food and beverage tax.

VIII. RENTAL CAR TAX

A. What's Taxable?

Establishments primarily engaged in short-term rental of passenger automobiles are subject to a 3% tax on gross receipts from the rental of Type 1 automobiles without drivers in Milwaukee County, for a period of 30 days or less. (See Part II.A., page 2, to determine where the rental of an automobile takes place.)

A "Type 1 automobile" is a motor vehicle designed and used primarily for carrying persons and includes (this list is not all-inclusive):

- Automobiles licensed as automobiles
- Passenger vans licensed as automobiles

"Type 1 automobiles" do not include (this list is not all-inclusive):

- Motor buses
- Motorcycles, mopeds, or motor bicycles
- Motor homes
- Motor vehicles licensed as trucks

Example: An establishment located in Milwaukee County that is primarily engaged in short-term rental of passenger cars without drivers provides a rental car for two days at the rate of \$50 per day to a customer. The customer is also charged \$10 per day for a child's car seat. This fee is only charged to customers who wish to rent a car seat, and the car seat is a standard car seat that can be used in any vehicle. The total charge to the customer is \$120 ($\$100 + \$20 = \120). Only the \$100 charge for the vehicle is subject to the 3% rental car tax. The charge to the customer for renting the child's car seat is not a part of the establishment's gross receipts from the rental of the automobile.

Caution: An "establishment primarily engaged in short-term rental of passenger cars" is a business location whose primary business is the rental of passenger cars for periods of 30 days or less. A location's primary business may be determined by comparing the gross receipts from each activity at a location for the previous taxable year (for example, sales, service, rentals) to the total gross receipts at that location for the previous taxable year. That activity with the greatest percentage of gross receipts is the primary business.

Example: Company A has two locations in Milwaukee County. At one location, Company A operates a motor vehicle dealership. At the other location, Company A operates a rental business, only renting passenger cars for periods of 30 days or less. The percentage of total gross receipts for the previous taxable year at

the motor vehicle dealership are as follows: Sales (45%), service (35%), rental of passenger cars for 30 days or less (10%), and rentals of vehicles for more than 30 days (10%).

Since the motor vehicle dealership location's primary business is sales, it is not an "establishment primarily engaged in the short-term rental of passenger cars." Therefore, taxable receipts from rentals of Type 1 automobiles for 30 days or less at that location are not subject to the rental car tax. Gross receipts from rentals of Type 1 automobiles at Company A's rental location are subject to the rental car tax.

Caution: Gross receipts subject to the 3% rental car tax may not be reduced by interest, finance, or insurance charges. See Part III.A., on pages 3 and 4, for more information.

B. What's Exempt?

Rentals of automobiles that are exempt from the 5% Wisconsin sales or use tax are also exempt from the 3% rental car tax.

Examples of rentals that are exempt from the 3% tax include (this list is not all-inclusive):

1. Rerentals.

Example: Company A leases an automobile from Company B for 30 days or less which it will lease to Individual C. Individual C takes possession of the automobile in Milwaukee County.

The charge by Company B to Company A for the lease of the automobile is not subject to the 3% tax because it is for rerental. Company A should provide Company B with a completed Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, indicating resale. The charge by Company A to Individual C is subject to the 3% rental car tax.

2. Service or repair replacement vehicles.

A lessor's rental of a Type 1 automobile to a customer is **not** subject to the 3% rental car tax if the customer's car is being serviced or re-

paired. The service or repair may be done by the lessor or someone other than the lessor.

Note: Although not subject to the rental car tax, the rental of service or replacement vehicles is subject to the 5% Wisconsin sales or use tax.

Example: Individual A takes his automobile to Company B, for repair. For a fee of \$20 per day, Company B provides Individual A with an automobile to use while his car is being repaired. Individual A picks up the automobile in Milwaukee County and uses it for five days.

The charge by Company B to Individual A for the use of the automobile is **not** subject to the 3% tax, regardless of who does the service or repair.

If the rental of a car is not subject to the 3% rental car tax because the customer's automobile is being serviced or repaired, the lessor must obtain a Form RV-207, *Certificate of Exemption for Rental Vehicles*, or similar document from the customer. If a document other than Form RV-207 is used, the document must contain all of the following:

- Signature of the customer.
- Name and address of the customer.
- Basis for the claimed exemption (for example, customer is renting this automobile while his or her automobile is being repaired or serviced by [fill in company's name]).

3. Rentals to the federal government.
4. Rentals to a Wisconsin governmental unit, including a Wisconsin county, city, village, town, public school, or school district.
5. Rentals to nonprofit organizations that hold Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue.
6. Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts.

Note: Transactions that are subject to the local exposition rental car tax are also subject to the following:

- A state rental vehicle fee of 5% (3% for rental or lease agreements entered into before October 1, 2005). For information on the state rental vehicle fee, refer to Publication 202, *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*. This publication is available from any Department of Revenue office or from the department's web site at www.dor.state.wi.us/html/taxpubs.html#sales.
- A regional transit authority fee of \$2 for each transaction (beginning June 1, 2006). *Exception:* If the transaction occurs outside of Milwaukee, Racine, or Kenosha counties, the regional transit authority fee does not apply.

For information on the regional transit authority fee, refer to *Wisconsin Tax Bulletin* #144 (September 2005), available at www.dor.state.wi.us/ise/wtb/144law.pdf.

IX. INTEREST AND PENALTIES

A. Interest

1. Refunds

Refunds of local exposition taxes bear interest at 9% per year.

2. Amounts Due

Additional local exposition taxes due as a result of an audit by the Wisconsin Department of Revenue or as a result of filing an amended return bear interest at 12% per year until such taxes are paid or become delinquent. Local exposition taxes that are delinquent bear interest at 18% per year.

B. Penalties

If you do not file returns, do not pay the tax by the due date of the return, or file incorrect returns, the following civil penalties may be imposed (this list is not all-inclusive):

1. Failure to File or Pay By the Due Date

- Late filing fee - \$20 charge for not filing a return by the due date if due to neglect.
- Negligence penalty - 5% of the tax due for each month (or part of a month) the return is filed after the due date because of negligence. The maximum negligence penalty for late filing is 25% of the tax due.
- Fraud penalty - 50% of the tax not paid if there was intent to defeat or evade the tax.

2. Filing Incomplete or Incorrect Returns

- Negligence penalty - 25% of the additional taxes due if there was negligence in filing the return.
- Fraud penalty - 50% of the additional taxes due if there was intent to defeat or evade the taxes.

In addition, criminal penalties relating to the 5% Wisconsin sales or use tax may also apply to the local exposition taxes.

C. Additional Enforcement of Room Tax

The room taxes, in addition to enforcement by the Wisconsin Department of Revenue, may also be enforced by the Local Exposition District. The Local Exposition District may do any of the following with respect to its room taxes:

1. Whenever the district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, it may inspect and audit the financial records of any seller subject to the room tax to determine whether or not the correct amount of room tax is assessed and whether or not any room tax return is correct.
2. Enact a schedule of forfeitures, not to exceed 5% of the room tax, to be imposed on any seller subject to the room tax who fails to comply with a request to inspect and audit the seller's financial records.
3. Determine the room tax according to its best judgement if any seller required to make a re-

turn fails, neglects, or refuses to do so for the amount, in the manner and form, and within the time prescribed by the district.

4. Require each seller who is subject to the room tax to pay an amount of taxes that the district determines to be due under 3. above, plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the seller files a correct room tax return and permits the district to inspect and audit his or her financial records pertaining to the furnishing of accommodations.
5. Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year or \$5,000, whichever is less, to be imposed for failure to pay the room tax.

X. CORRECTING AN ERROR

A. Underpayments

If you file your return and later become aware that you made an error on the return by underreporting local exposition taxes due, you should file an amended return with the Wisconsin Department of Revenue.

You should use Form EX-12, *Local Exposition Tax Return*, to file an amended return. Write "Amended Return" at the top of Form EX-12 and complete the return with the amounts that should have been reported. Include a copy of the Form EX-12 you previously filed along with a letter explaining the changes.

Amended returns should be sent to Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8946, Madison, WI 53708-8946.

B. Overpayments - Claims for Refund

If you determine that you overpaid local exposition taxes to the Wisconsin Department of Revenue or to a seller, a claim for refund of the overpaid tax may be filed as explained below. Who may file the claim for refund depends on whether you are a seller or a buyer.

• Sellers

If you overpaid local exposition taxes on the sale to a buyer of lodging, food, or beverages or the rental of automobiles, you may file a claim for refund. It is suggested that you use Form EX-12, write "Amended Return" at the top of Form EX-12, and fill in the correct amounts. Include a copy of the Form EX-12 you previously filed, along with a letter explaining the changes.

Caution: Refunds of local exposition taxes, including interest, collected from a buyer must be returned by the seller to the buyer. If a seller is unable to refund the tax and interest to the buyer, the refund must be returned to the Wisconsin Department of Revenue. See Part X.C., on page 16, for additional information about a seller's requirement to refund sales or use tax to its customer.

• Buyers

A buyer may file a claim for refund with the Wisconsin Department of Revenue for local exposition taxes paid to a seller in error if the claim for refund is \$50 or more of tax.

If the tax is less than \$50, a buyer may still file a claim for refund with the Department of Revenue for tax paid in error to a seller if 1) the seller is out-of-business, 2) the buyer is being field audited, or 3) the period covered in the claim for refund is within the statute of limitations for the buyer, but is closed for the seller. If none of these conditions are met by the buyer and the claim for refund is under \$50, the buyer may not file a claim for refund with the Department of Revenue, but may request the seller who paid the tax to the Department of Revenue to file a claim for refund.

A buyer filing a claim for refund with the Wisconsin Department of Revenue of local exposition taxes paid in error to a seller should contact the Wisconsin Department of Revenue for information on how to file a claim.

The time limitations in which a claim may be filed are the same as for the 5% Wisconsin sales and use

tax. For more information, obtain Publication 216, *Filing Claims for Refund of Sales or Use Tax*. This publication is available from any Department of Revenue office or from the department's web site at www.dor.state.wi.us/html/taxpubs.html#sales.

Claims for refund should be sent to Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8946, Madison, WI 53708-8946.

C. Seller's Requirement to Refund Sales or Use Tax to Its Customer

The situations under which a seller is required to refund sales or use taxes to buyers were expanded by 2005 Wisconsin Act 49. Under the new law, a seller is required to refund taxes and related interest to the buyers from whom the taxes were collected, in the following situations:

- The seller files a claim for refund with the Wisconsin Department of Revenue, for taxes that the seller has collected from buyers, and receives such refund.
- The seller files a claim for refund with the Wisconsin Department of Revenue, for taxes that the seller has collected from buyers, and the seller is entitled to a refund of such taxes, but the refund is offset against deficiencies of the seller due and owing on the books of the Wisconsin Department of Revenue.
- The seller collects amounts as taxes erroneously from buyers, but the seller does not remit such amounts to the state.

If the seller cannot locate the buyers, the seller must return the taxes and related interest to the Wisconsin Department of Revenue within 90 days after the date of the refund, within 90 days after the date of the offset, or within 90 days after discovering that the seller has collected taxes erroneously from the buyers.

The new law first applies to notices of refunds or notices of amounts due dated, offsets taken, and the discovery of amounts collected erroneously as taxes on October 28, 2005, even if the notices, offsets, and amounts relate to sales that occurred as far back as September 1, 1994.

Under prior law, a seller was required to refund sales or use taxes to buyers in Situation (a) above, but not in Situations (b) and (c) above.

XI. RECORDKEEPING

A. General Records to Keep

If you are required to file local exposition tax returns, you must keep adequate records of business transactions to enable you and the Wisconsin Department of Revenue to determine the correct tax due.

B. Records to Keep - Exempt Sales and Certificates

The requirements for exemption certificates or other documentation that a sale or rental is exempt that apply to the 5% Wisconsin sales or use tax also apply to the local exposition district taxes.

An exemption certificate received by a seller as proof that a sale was exempt from sales and use tax may be used as proof of exemption from local exposition district taxes. You do not need a separate exemption certificate for local exposition district taxes if you receive an exemption certificate for sales and use taxes that applies to the same transaction.

Example 1: Company A does not charge tax on its sale of food or beverages to its customer because the customer is going to resell the food and beverages. Company A has an exemption certificate indicating resale on file for this customer for sales and use tax purposes. That certificate may also be used as proof that the sale was exempt from the 0.25% food and beverage tax.

Example 2: Company B does not charge the 5% Wisconsin sales tax on lodging furnished to a Wisconsin governmental unit. Company B receives a purchase order from the governmental unit and invoices the governmental unit for the lodging furnished. This documentation is also sufficient for exempting the sale of the lodging from the 2% and 7% room taxes.

XII. YOU MAY BE AUDITED

If you are in business, an auditor from the Wisconsin Department of Revenue may visit you. Don't be alarmed, as many taxpayers are audited to determine if they paid the correct amount of income, corporate, withholding, and sales and use taxes.

You will be notified prior to any audit so that a convenient time can be arranged to examine your records. As a taxpayer, you are required to make available your records for local exposition taxes as well as your records for other Wisconsin taxes. To perform the audit, it will be necessary for the auditor to examine these records. Don't hesitate to ask any questions of the auditor.

If the audit results show that you have not paid the proper amount of tax, the department will issue you a written notice indicating the amount of tax you owe or overpaid. As a taxpayer you have the right to appeal if you disagree with the audit. The notice from the department will explain the procedures for appealing.

XIII. IF YOU HAVE QUESTIONS

If you have any questions about the local exposition taxes, you may write to the Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949. You may also visit or call either of the following Wisconsin Department of Revenue offices:

Milwaukee	819 N. 6th St.	(414) 227-4444
		TTY (414) 227-4147

Madison	2135 Rimrock Rd.	(608) 266-2776
		TTY (608) 267-1049

These offices are open from 7:45 a.m. to 4:30 p.m., Monday through Friday.

You may also contact the department as follows:

Fax: (608) 267-1030

E-Mail: sales10@dor.state.wi.us

Visit our web site: www.dor.state.wi.us